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U.S. District Court - DT
May 27 2020 PM 2:23

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION

In re:

ALLEN BEAL,
Debtor.

STATE BANK OF SOUTHERN
UTAH, a Utah banking
corporation,

Plaintiff

VS.

ALLEN BEAL,
Defendant/Debtor.

)
)
)
) Evidentiary Hearing
) on Motion to Extend
) Time for Filing
) Adversary Proceeding,
) and Motion to Strike

) Case No. 19-20276
)
) Volume 1

October 23, 2019 * 2:03 p.m.

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P R O C E E D I N G S

THE CLERK: Court resumes in session.

Please be seated.

In the matters of State Bank of Southern Utah versus Beal and Allen Beal.

THE COURT: Will counsel please note their appearances?

MR. CALL: Steve Call and Justin Kuettel appearing on behalf of State Bank of Southern Utah.

MR. MORRISON: Will Morrison for the debtor, who is present -- the debtor/defendant.

THE COURT: All right. We have two matters on the calendar. We have the evidentiary hearing on Mr. Call's motion to extend time for filing the adversary proceeding. And we also have the motion to dismiss the adversary proceeding and motion to strike.

So the parties agree that the issues are essentially the opposite side of the same coin.

MR. CALL: Yes.

THE COURT: So -- and we'll be having many of the same witnesses, so I'm wondering if it's agreeable that cross-examination would include direct examination. I mean, so --

1 MR. CALL: No redirect?

2 THE COURT: No, you can have redirect.

3 I'm just -- rather than saying, Objection, beyond the

4 scope of examination -- so, in other words,

5 Mr. Morrison may have a witness that he would call as

6 his witness that he would be cross-examining, and

7 it's just easier for him to go ahead and --

8 MR. CALL: Do it at the same time.

9 THE COURT: Do his direct examination, if

10 he has any, and then you, of course, can do redirect

11 or cross.

12 MR. CALL: Agreed.

13 THE COURT: Okay.

14 MR. MORRISON: Also agreed.

15 THE COURT: All right.

16 MR. MORRISON: Also, I believe we took

17 care of the motion to strike at one of our initial

18 hearings, so we just decided to set this down for an

19 evidentiary hearing.

20 THE COURT: All right. So if it's

21 agreeable with the parties, I'll just let Mr. Call

22 proceed and then -- it seems like logically that

23 would be the first one to consider.

24 MR. MORRISON: I agree.

25 THE COURT: All right. So, do you have

1 opening statements or just want to go to evidence?

2 MR. CALL: I'm good to go to evidence and
3 then just --

4 THE COURT: We have had several --

5 MR. CALL: The legal arguments.

6 THE COURT: Right. We had that -- several
7 prior hearings and I know what we're going to be --

8 MR. MORRISON: We know what the issues
9 are. Let's just go ahead and go with the evidence.

10 THE COURT: Okay. Mr. Call, if you want
11 to call your first witness.

12 MR. CALL: I guess I'm going to testify,
13 your Honor.

14 THE COURT: All right. If you would come
15 forward and be sworn.

16 (Witness sworn.)

17 THE CLERK: Have a seat at the witness
18 stand. State and spell your last name for the
19 record, please.

20 MR. CALL: Steven W. Call. S-t-e-v-e-n,
21 W., C-a-l-l.

22 STEVEN W. CALL,
23 called as a witness, being first sworn,
24 was examined and testified as follows:
25

DIRECT EXAMINATION

BY MR. KUETTEL:

Q. Mr. Call, are you an attorney for State Bank of Southern Utah in this case?

A. Yes, I am.

Q. Are you lead counsel for State Bank in this case?

A. Yes, I am.

Q. What's the underlying basis for the claims in this case?

A. They arise from a loan transaction made by State Bank of Southern Utah to the debtor, Allen Beal, to the debtor's wife's, Elizabeth Beal, and to a company that they owned called A & L Transport.

Q. Okay.

A. Let me finish answering.

And State Bank had loaned that money to that group, including the debtor. It was a secure transaction. And there was a significant amount of collateral that was pledged to secure the loan.

Q. Okay. Was there a lawsuit filed against the debtor?

A. Yes. There was a lawsuit filed in the Fifth District Court for the State of Utah in Iron

1 County against those three individuals.

2 Q. Did the state court have --

3 A. Oh, I'm sorry. Those two individuals and
4 the one entity.

5 Q. Did the state court enter a judgment in
6 the state court case?

7 A. It did. There was a judgment entered by
8 the state court against all three of them for the
9 indebtedness owing under the credit transaction to
10 State Bank.

11 Q. What was the amount of that judgment?

12 A. It was approximately 237,000.

13 Q. Did the Bank undertake discovery against
14 the debtor?

15 A. In the bankruptcy case?

16 Q. Yes.

17 A. Yes. The Bank undertook discovery against
18 the debtor. It filed a motion -- an ex parte motion
19 for a 2004 exam, obtained an order, and then issued a
20 2004 subpoena.

21 Q. Did the Bank serve a -- oh, did the debtor
22 produce documents in response to that 2004 subpoena?

23 A. About five documents.

24 Q. Did you conduct the debtor's 2004 exam on
25 April 22nd, 2019?

1 A. I did.

2 Q. What time did that deposition end?

3 A. The deposition -- if I recall, I think it
4 started around 10:00 -- I may be wrong; it may have
5 been 9:00. It ended around 3:00.

6 Q. Before conducting the 2004 examination,
7 did the Bank's counsel begin to prepare an adversary
8 complaint against the debtor?

9 A. Yes. A draft of the Complaint was
10 prepared the prior week.

11 Q. Did anyone else help with the Complaint?

12 A. Yes, you did.

13 Q. Was the Complaint based in part on the
14 state court judgment entered against the debtor?

15 A. It was. The Complaint sought the
16 nondischargeability of the state court judgment that
17 was entered against the debtor.

18 Q. Did the Bank serve discovery on anyone
19 else?

20 A. It did. The Bank filed, again, another
21 motion for a 2004 examination. And upon the entry of
22 that order, there was a 2004 subpoena served upon
23 Mountain Credit Union.

24 Q. Did you receive those documents?

25 A. From the credit union?

1 Q. Yes.

2 A. Yes. There were a number of documents
3 produced the prior week.

4 Q. You'll see in front of you there is a
5 binder of the Bank's exhibits. If you could turn to
6 Exhibit 1 and identify that document for us, please.

7 A. Yes. Exhibit 1 is a document that I
8 printed from my computer which shows the metadata on
9 the Complaint that was filed in this adversary
10 proceeding.

11 And the -- what it indicates there is it
12 has my user name on the right-hand side, which -- my
13 user number, which is 287. And it shows the various
14 revisions that were made to the Complaint from
15 approximately 4:00 p.m., when the document was
16 checked out -- I checked it out at 4:21. So it shows
17 my number, 287, and then it shows checked out at
18 4:21. And then it shows revisions up until I checked
19 it in at 11:24.

20 Q. Thank you.

21 So the Complaint was completed by
22 11:24 p.m.?

23 A. The Adversary Complaint was completed by
24 11:24.

25 MR. KUETTEL: We would move the Court to

1 enter Exhibit 1 into evidence.

2 MR. MORRISON: No objection.

3 THE COURT: Exhibit 1 is received.

4 Q. (BY MR. KUETTAL) When were the exhibits
5 to the Adversary Complaint prepared?

6 A. Most of it were prepared after the
7 documents were produced by the credit union the prior
8 week. I'm sorry. Most of them were prepared the
9 prior -- did you want me to wait?

10 THE COURT: No. I mistakenly thought
11 there were additional pages to Exhibit 1, but there
12 are not, so you may proceed.

13 THE WITNESS: Okay.

14 MR. KUETTEL: Thank you, your Honor.

15 THE WITNESS: Most of the exhibits were --
16 to the Adversary Complaint were prepared...

17 MR. KUETTAL: Sorry.

18 THE WITNESS: Most of the exhibits that
19 were attached to the Adversary Complaint were
20 prepared after the credit union produced the
21 documents the prior week.

22 However, because the debtor did not
23 provide his documents until the time of his
24 deposition, any exhibit that -- that -- any exhibit
25 that included a document he produced would have been

1 produced after the deposition.

2 Q. (BY MR. KUETTEL) So when were the
3 exhibits finalized?

4 A. Finalized for filing?

5 Q. Yes.

6 A. The process that -- that we went through
7 was that we had the exhibits that were going to be
8 attached to the Complaint in the earlier -- in the
9 later afternoon, after the deposition had completed,
10 but prior to 8:00, when you left, and -- and then
11 they were placed upon my desktop in pdf format for
12 filing.

13 Q. Can you turn to Exhibit 2 in that
14 notebook, please?

15 A. Yes.

16 Q. Have you seen these documents before?

17 A. Yes. These -- these documents are
18 screenshots of the exhibits that were placed upon my
19 desktop in preparation for filing.

20 Q. Why were they placed on your desktop?

21 A. Oh, it's been my experience that it's
22 easiest to attach --

23 UNIDENTIFIED SPEAKER: Bless you.

24 UNIDENTIFIED SPEAKER: Thank you.

25 THE WITNESS: It's been my experience that

1 it's easier -- the easiest way to attach exhibits
2 when filing a document with the ECF system is to have
3 it on your desktop in pdf format.

4 So I had them all in my desktop in pdf
5 format.

6 And the dates of these are in these
7 documents, so if you look -- the first one was
8 earlier, but the rest of them -- it looks like on the
9 second page it was 11:29. And I think the last one
10 was there at 11:36. So I had the Complaint ready to
11 file and the exhibits on my desktop ready to go at
12 approximately 11:36.

13 MR. KUETTAL: Your Honor, we would like to
14 move to enter these documents listed as Exhibit 2
15 into evidence.

16 MR. MORRISON: No objection.

17 THE COURT: All right. So Exhibit 2 is
18 pages marked -- Bates-stamped HG000002 through
19 HG000011, and that exhibit is received.

20 MR. KUETTAL: Thank you, your Honor.

21 Q. Mr. Call, are you aware that there is a
22 filing fee required to file an adversary proceeding?

23 A. Yes, I am.

24 Q. Do you know how much it is?

25 A. Yes. \$350.

1 Q. How did you plan to pay for that?

2 A. You mean upon filing the Complaint?

3 Q. Yes.

4 A. Our firm --

5 Q. On April 22nd.

6 A. On April 22nd, yes.

7 Our firm has credit cards issued by Zions
8 Bank in the name of Ray, Quinney & Nebeker, and we
9 have a number of those cards that we use for filing
10 because we have a lot of people filing. But I
11 obtained a credit card from our firm after the
12 deposition finished, around 5:00, so that I would
13 have that to file -- to use to file.

14 Q. Okay. What did you do after you had the
15 exhibits on your desktop?

16 A. I logged in to do the filing. I used the
17 password for ECF filing, not the PayServ password.
18 And I have -- I have a sheet with various passwords
19 for bankruptcy court, PayServ, for filing, for
20 district court filing, and for Tenth Circuit filings.

21 So I used the bankruptcy -- my bankruptcy
22 ECF filing that I've had for a very, very long time.
23 Input my password and logged on.

24 Q. Then what did you do?

25 A. After I logged on, I proceeded to go

1 through the filing process. It asked me to identify
2 who the parties were. So I identified the plaintiff
3 as State Bank of Southern Utah.

4 It asked me to identify who the defendant
5 was. Oh, no, it asked me to identify who the
6 attorneys were. I identified Justin Wayment. I
7 think he's the state court -- he was the state court
8 attorney. And his name came up.

9 And -- and then my name came up. And so
10 I -- I designated those parties as the plaintiff and
11 their counsel, and then the defendant -- the debtor
12 as the defendant in the adversary proceeding.

13 Q. What did you do after that?

14 A. After I did that I then proceeded -- you
15 go through -- in the software it goes through
16 different screen iterations or advances. And so I
17 would -- I would work through these advances on the
18 filing system.

19 It took me to the page where I needed to
20 identify the nature of the lawsuit that was -- the
21 Complaint that was being filed -- or the claim for
22 relief that was being filed.

23 Q. And what did you do when you got to that
24 page?

25 A. When I got to that page, over to the

1 right-hand side I indicated what the nature of the
2 action was. And it has a -- if you could maybe turn
3 that around, I could show you.

4 MR. MORRISON: And I can't see. Can you
5 identify what we are looking at?

6 THE COURT: That was Exhibit 3, correct,
7 Mr. Call?

8 THE WITNESS: It is. May I -- if I could
9 get to my briefcase. I have these to hand out.

10 THE COURT: Certainly.

11 THE WITNESS: So on this document -- and I
12 believe -- this is just a blowup of what's in
13 Exhibit 3, but I entered there where it says 523
14 dischargeability -- or 523(a)(6), willful and
15 malicious injury.

16 Q. (BY MR. KUETTEL) And what did you do
17 after you checked that?

18 A. I put in the second nature of suit
19 underneath it.

20 THE COURT: So, Mr. Call, just so we can
21 be clear on the record; this ties into your
22 Exhibit 3 --

23 THE WITNESS: Yes.

24 THE COURT: -- and Exhibit 3 has multiple
25 pages. So for Mr. Morrison's benefit, the part of

1 Exhibit 3 that Mr. Call is looking at and testifying
2 to I believe is page...

3 THE WITNESS: Thirteen.

4 THE COURT: 0013.

5 THE WITNESS: Yes.

6 THE COURT: Is that correct?

7 THE WITNESS: Yes. No, no, no. No, no.
8 That's not right. That's not right.

9 MR. KUETTEL: So, your Honor, in my --
10 it's kind of a darker scan. It's -- the Bates stamp
11 on this one is a little strange. It's to the left --
12 bottom left.

13 THE COURT: Okay. 0017.

14 MR. MORRISON: Thank you, your Honor. I
15 found it.

16 THE COURT: You found it. Okay. All
17 right. Go ahead, Mr. Call.

18 THE WITNESS: Yes.

19 So I insert the -- I put the primary
20 nature of the action. And then I also inserted the
21 secondary nature of the action, which was an
22 objection to discharge.

23 Q. (BY MR. KUETTAL) What did you do after
24 that?

25 A. After that I then proceeded down to the

1 demand window, just -- which is over there just to
2 the left.

3 Q. Does a demand window indicate that you
4 must enter a dollar sign?

5 A. My inter -- the demand window says demand
6 and it has a parenthesis, a dollar sign, three zeros
7 and a parenthesis.

8 My interpretation of that is that you
9 would put the demand with the dollar sign and a whole
10 number within that window.

11 Q. So what did you do?

12 A. So I input -- I input the amount of the
13 demand -- I put in the amount of the default judgment
14 that was entered by the state court, which was based
15 upon the first claim for relief, with a dollar sign
16 and a -- I believe I had a comma with it at the time.

17 Q. What happened when you did that?

18 A. I then clicked the next button and it
19 would not proceed. I received a message that said
20 integer missing. I-n-t-e-g-e-r, integer, t-e-g-e-r.

21 Q. And what did you do after you received
22 that message?

23 A. I went back and removed the comma and
24 tried -- tried to see if it would advance to the next
25 window. It wouldn't.

1 So I went through a host of permutations
2 to try to see if I could advance through that
3 window -- or screen to the next screen.

4 And -- and after I couldn't, I tried to
5 advance without putting any number in there. It
6 would not allow me to advance.

7 So I would -- I started just entering just
8 random numbers. I was starting to become a little
9 concerned, you know, that I couldn't advance, and so
10 I started entering just random numbers.

11 Q. What time was this, around?

12 A. It was around 11:45.

13 Q. Okay. So how did you eventually get off
14 this page?

15 A. It -- after I sat there and went through
16 just different numbers on my keyboard, just -- it --
17 it eventually advanced to the next screen.

18 MR. KUETTAL: Okay. Your Honor, this is
19 within Exhibit 3 as well. It's a Bates stamp ending
20 with 20, 2-0.

21 Q. Is this the screen that you were
22 eventually able to reach?

23 A. Yeah. I mean, I went through and loaded
24 the -- the document from my desktop. There's a --
25 there's a screen where you -- you go to the desktop

1 and you hit open -- or you hit enter, and it moves
2 the Complaint -- or your documents that you're filing
3 onto that. So that process went fine.

4 And so after that I advanced to this
5 window, which said, open adversary case.

6 Q. What happened when you reached this page?

7 A. And when I reached the open adversary case
8 it -- it indicated -- well, before this window there
9 was a window that said, Are you a trustee or are you
10 the debtor? And even if so, you have a right to
11 defer payment. If not, then you must make payment
12 via the Internet.

13 So wasn't the trustee, wasn't the debtor;
14 didn't have a deferred right. I was planning to pay.
15 So I clicked the next button that said pay via the
16 Internet. And it took me to this screen that said
17 open adversary case, fee \$350 for a complaint.

18 Q. And when you attempted to make the
19 payment, did it allow you to pay and open an
20 adversary proceeding?

21 A. It did not.

22 Q. Were you able to get the system to allow
23 you to pay by credit card when you were ready and
24 able to pay?

25 A. No. So I backed up. It -- the system

1 would not go forward. And because it said open
2 adversary proceeding, I was of the view that -- that
3 to get the adversary proceeding opened, because of
4 the way the screen reads, that I needed to make sure
5 that I got the \$350 paid.

6 So I backed up. There's a backup button
7 over on the right. It doesn't show on that document.
8 But I backed up to try to see if I could free up the
9 system so I could make a filing. And I backed up
10 three or four screens, which took me back in front of
11 the demand screen again.

12 Q. Before you hit the backup button, did you
13 receive any sort of error message or anything while
14 you were on this page trying to make the payment?

15 A. I did. When I clicked and clicked and
16 clicked, I would -- an error message would come up
17 that would say, case opening canceled, writing --
18 writing answer records.

19 Q. Okay. And that's the error message that
20 you got on the -- when you attempted --

21 A. Yes.

22 Q. -- payment on this?

23 A. Well, not -- at first it wouldn't do
24 anything. It would just not move. But then as I
25 would click it and click it, eventually that error

1 message would come up.

2 THE COURT: I'm sorry. So what was that
3 error message?

4 THE WITNESS: It was something to the
5 effect that case opening failed. Case opening
6 failed. Writing answer record.

7 THE COURT: Okay. Writing. So
8 w-r-i-t-t-i-n-g [sic]?

9 THE WITNESS: Yes.

10 THE COURT: Okay.

11 Q. (BY MR. KUETTAL) And so after all this,
12 you -- what did you do after that, after you received
13 those error messages?

14 A. I -- I -- it appeared to me that the
15 system was not -- was not responding properly.

16 Q. Okay.

17 A. So I hit the backup button and went back
18 several screens to see if I could kind of start over
19 and go forward and get it to accept the payment.

20 Q. Okay. Did you do anything else?

21 A. Well, yes. It -- it took me -- because
22 when I went back I was in front of the -- I went back
23 in front of the payment screen. So I was confronted
24 again with trying to put a dollar amount into the
25 payment screen in order to get past it.

1 But I knew from the prior problem that I
2 had that if I entered some random numbers that it
3 would take that rather than inserting the specific
4 number. So I started entering some random numbers,
5 and I was able to get past that screen.

6 Q. Did you ever attempt to call anybody to --
7 to see if you could get help with this?

8 A. I did. After -- after I went through that
9 process and I arrived with the same problem, I placed
10 a call to my bankruptcy paralegal, Carrie Hurst. I
11 placed a call to you and to my secretary,
12 Eliza Tito.

13 Q. Were you able to reach them?

14 A. I -- I wasn't. I was going to ask them if
15 they had encountered that problem before and if they
16 had figured a way to work around it.

17 Q. Is it your testimony that the system was
18 not working correctly?

19 A. Yes.

20 Q. What did you do after you experienced all
21 of these issues?

22 A. I -- I became concerned. And so I thought
23 maybe the best alternative was to forward a copy of
24 the Complaint to opposing counsel.

25 So at about 11:58 I forwarded an e-mail --

1 or attempted to forward an e-mail to Will Morrison,
2 who was the opposing lawyer. I sent it -- when it
3 came up, it said 12:00 and -- but then there was a
4 strange message about whether it was sent. So I
5 attempted to send it again.

6 Q. If you can turn to Exhibit 4 in that book
7 in front of you.

8 A. Exhibit 4?

9 Q. Yes.

10 A. Yes.

11 Q. Is this the e-mail -- does this -- is this
12 the e-mail that you tried to send -- or that you
13 sent?

14 A. Yes, yes, this -- this is the e-mail. It
15 says Tuesday, April 23rd, 12:00 a.m., to
16 Will Morrison. That was his e-mail address.

17 And then it has the attachment, a copy of
18 the Complaint.

19 But it said, Your message is ready to be
20 sent with the following file or link attachment, and
21 then it listed the Complaint.

22 So I became concerned that maybe it didn't
23 go. I wanted to make sure he got it, so I sent an
24 additional e-mail to him.

25 Q. Okay. Can you turn to Exhibit 5 in that

1 notebook, please?

2 A. Yes.

3 Q. Is this the additional e-mail that you
4 sent to him?

5 A. Yes. You know, it goes through -- you
6 send it, sometimes when -- after it's sent it will
7 come back with the sent time. So this says that this
8 went at 12:02 and had a copy of the Complaint
9 attached.

10 Q. Okay. What did you do after that?

11 A. After that I sent further e-mails to
12 Mr. Morrison with the exhibits to the Complaint.

13 Q. Okay. Can you turn to Exhibit 6 in that
14 exhibit binder, please?

15 A. Yes.

16 Q. And also Exhibit 7. If you can kind of
17 flip back and forth.

18 Are those two -- do you recognize those
19 two --

20 A. I do.

21 Q. -- amounts?

22 A. Yes. Exhibit 6 is an e-mail I sent to him
23 after I had sent the earlier two e-mails where I
24 indicated to him that I was having -- it says, "I
25 have been trying to get the Bank's Complaint for 25

1 minutes but there were problems with the software.
2 As such, I'm e-mailing to -- e-mailing to --
3 Complaint to you with the exhibits."

4 And so I -- even though I had sent the
5 Complaint, I thought I would send it twice. I
6 reattached the Complaint with Exhibits 1 through 5.

7 Q. And what time was that at?

8 A. That was at 12:08.

9 Q. Okay. And if you can flip over to
10 Exhibit 7.

11 A. Yeah. On Exhibit 7, I sent this -- this
12 was a trailing e-mail that I sent that included
13 exhibits. It says Exhibits 5 through 10, but it was
14 actually Exhibits 6 through 10.

15 Q. Okay.

16 A. So the subject line is -- is erroneous,
17 but the attachments are correct, 6 through 10.

18 Q. So is it correct that you attempted to
19 e-mail opposing counsel at or around midnight?

20 A. I -- well, it was a little bit before. It
21 was just a minute or two before midnight when I
22 tried to -- first tried to send the first Complaint,
23 which was exhibit -- the first -- what was it?

24 Q. Exhibit --

25 A. Exhibit 4.

1 Q. Exhibit 4, correct.

2 A. And then to make certain, I re-sent
3 Exhibit 5, and then I followed up with Exhibits 6 and
4 7, with the exhibit -- with the exhibits.

5 MR. KUETTAL: Your Honor, we would like to
6 move to enter Exhibits 4 through 7 into evidence.

7 MR. MORRISON: No objection.

8 THE COURT: Exhibits 4 through 7 are
9 received.

10 MR. KUETTAL: I apologize. I would also
11 like to move to enter Exhibit 3 into evidence.

12 MR. MORRISON: No objection.

13 THE COURT: Exhibit 3 is received.

14 Q. (BY MR. KUETTAL) So after you sent these
15 e-mails to opposing counsel, what did you do?

16 A. I went back -- I was -- logged onto the
17 system, if I recall correctly, and I went in and
18 tried to refile the Complaint again.

19 Q. Okay. What occurred?

20 A. What occurred was I went through to the
21 same window with the demand, and on the demand window
22 I insert the numbers -- I believe it was 2 -- I
23 didn't use a dollar sign, as it indicated. I just
24 used a whole number. And the numbers I used were --
25 I used the numbers 2,000, 200 and 200,000.

1 Q. Did you confront the same problems?

2 A. It took one of those -- it took the last
3 one of those three numbers that I put in.

4 Q. Were you able to ever pay the \$350 filing
5 fee at that time, on that night?

6 A. No. No. So if I could explain. After I
7 insert -- inserted those numbers, it took me to the
8 next screen, reloaded or did whatever I needed to do
9 to advance to the payment screen.

10 I advanced to the payment screen, and
11 indicated that I wanted to pay over the Internet
12 again, just like I had done before, and it -- it -- I
13 clicked it. It took me to this screen that's here
14 that says Exhibit 3, open adversary case, pay \$350.

15 UNIDENTIFIED SPEAKER: That's the one that
16 ends in Bates 20.

17 THE WITNESS: Bates 20. And tried --
18 tried to see if I could get some way to pay, and it
19 just wouldn't pay.

20 As I would click on the next button, I
21 would receive the message that I indicated before.
22 At first I wouldn't, it was just almost as if it were
23 frozen. But if I click and click and click, then
24 eventually that message that -- would come up that
25 would say case failed, case -- case fail -- case open

1 fail --

2 Q. (BY MR. KUETTEL) But it was the same
3 message?

4 A. -- writing answer record. Uh-huh.

5 Q. Okay. What happened after that, after you
6 were unable to pay?

7 A. I -- after that occurred I left a message
8 for my paralegal, Carrie Hurst, to contact the court
9 first thing in the morning when she came in and to
10 inform them of the problems we had in trying to file
11 the Complaint.

12 Q. Okay. If you could turn to Exhibit 11 in
13 that notebook. Do you like -- do you recognize this
14 document?

15 A. Yes. I had this document prepared from
16 the bankruptcy system.

17 Q. What is it?

18 A. It's entitled Cases Report, and it is --
19 it's an -- Exhibit 11. And what the system allows
20 you to do is to go in and run a case report. You
21 insert certain criteria, and it prints out the report
22 for you.

23 Q. And what does this document reflect?

24 A. This -- this document reflects in the
25 middle column -- well, first of all, it shows that

1 there were -- within the time span that was -- that
2 I -- that was entered by my office, and with the
3 criteria it shows that there were three -- three
4 adversary proceedings.

5 And the middle col -- the middle row shows
6 the State Bank filing and it shows the case number.
7 It has a -- I think the TP stands for type of
8 proceeding. And it has the initials AP for adversary
9 proceeding.

10 Then it has the party information, State
11 Bank of Southern Utah, the attorney. It has your
12 name. And then it has Mr. Morrison's name as the
13 attorney for the defendant.

14 And then over -- next to that, in the next
15 column it has the name of -- of Judge Mosier.

16 And then next to that it has dates
17 indicating when items were filed and when items were
18 entered.

19 Q. And are those two dates the same?

20 A. No, they're not.

21 Q. Do you know why those dates are different?

22 A. I believe I do.

23 Q. Can you turn to Exhibit 14, please?

24 A. Yes.

25 Q. Do you recognize this document?

1 A. I do.

2 Q. What is it?

3 A. This is a transaction log document that,
4 again, is prepared from the bankruptcy system. And
5 what it does is it allows you to identify certain
6 transactions over a period of time.

7 And so this report was 4-22 to 4-24. And
8 what it was -- what the report was doing was showing
9 certain events that occurred during that period of
10 time.

11 And the middle -- or the third line
12 down -- no. Let's see. This -- yeah, the third row
13 down I think explains the matter. And --

14 Q. And what is your understanding of that?

15 MR. MORRISON: Objection. Objection, your
16 Honor. Lacks foundation.

17 THE COURT: I understand Mr. Morrison's
18 objection. I'm going to sustain the objection
19 because -- Mr. Morrison saying Mr. Call doesn't have
20 personal knowledge of this. But I'm going to allow
21 Mr. Call to answer, limiting and clarifying that his
22 testimony is simply his understanding, which doesn't
23 go to the document, it's just simply his
24 understanding.

25 MR. KUETTEL: Fair enough. Thank you,

1 your Honor.

2 THE WITNESS: Yes. My understanding of
3 this transaction log is that -- is what it says,
4 which is -- if I could read it. It says, quote,
5 "This is a temporary log entry" -- bless you -- "This
6 is a temporary log entry to handle timing issues with
7 docketing the same event many times," close quote.

8 And then it has the identification number.

9 So what my understanding of that is, is
10 that there were various events that occurred and
11 that -- and I believe that these were the various
12 filings that I had made both before I sent my e-mails
13 and then after when I made the last filing. And that
14 this is stating that there were -- that this entry
15 was a temporary log entered to handle these -- the
16 timing issues with regards to docketing events that
17 occurred multiple times.

18 Q. (BY MR. KUETTEL) And so how does that
19 relate to your understanding of Exhibit 11?

20 A. So that --

21 MR. MORRISON: Same objection with respect
22 to Exhibit 11. Lacks personal knowledge. Lacks
23 foundation.

24 THE COURT: So I'm going to sustain the
25 objection. So -- I mean, number one, it's well

1 taken, but as an illustration there's -- I don't see
2 any connection between Exhibit 14 and Exhibit 11.
3 There's nothing on Exhibit 14 that even says
4 April 22nd. So I -- I don't have personal knowledge
5 of this, but that's exactly Mr. Morrison's objection,
6 is anyone can look at this and they can form their
7 own opinion as to what this says, but that doesn't
8 mean that's what it says.

9 MR. KUETTEL: Okay. That's fair, your
10 Honor. And I appreciate that explanation.

11 We would like to move to enter Exhibits 11
12 and 14 into evidence based on the fact that they are,
13 you know, transaction logs and case reports produced
14 by the court.

15 THE COURT: So these were produced -- when
16 you say "produced by the court" --

17 MR. KUETTEL: Through the court software.
18 So I believe Mr. Call's testimony was that -- that he
19 and Ray Quinney, you know, input certain search
20 criteria and things like that, but -- but that these
21 were actually produced from the websites of the --
22 the court.

23 THE COURT: Any objection, Mr. Morrison?

24 MR. MORRISON: I still have an objection
25 to Exhibit 11. I think that has to be introduced

1 through a court staff member so we can actually know
2 what it's referring to.

3 I'm okay with Exhibit 14.

4 THE COURT: Well -- so I'm going to help
5 just to hurry this along. I think the question is a
6 foundational question as to how -- how was this
7 document generated. And I think what the testimony I
8 heard suggested, but didn't clearly state, is
9 Exhibit 11 and Exhibit 14 were reports that were
10 generated by Ray Quinney. They signed onto the
11 CM/ECF system, they typed in some data, some
12 parameters, and these reports come up.

13 So to the extent that these are reports
14 generated by Ray Quinney from the court's ECF system,
15 is there an objection, Mr. Morrison?

16 MR. MORRISON: No, I'll just reserve it
17 for weight.

18 THE COURT: Okay. So with that
19 clarification as to the foundation and the origin of
20 these documents, that they are simply something that
21 was generated by Ray Quinney Friday from the court's
22 website, I'm going to admit Exhibits 11 and 14.

23 MR. KUETTEL: Thank you, your Honor. And
24 I am almost finished.

25 Q. Mr. Call, did you eventually log off the

1 system?

2 A. Yes, I did.

3 Q. Did you do anything else that evening? As
4 it relates to this case, not...

5 A. I am trying to remember. I don't -- I
6 don't believe so.

7 Q. Okay. Did you speak with your paralegal
8 about paying the fee?

9 A. Yes. I didn't speak with her that
10 evening. I left a message for her to contact the
11 court first thing in the morning and to --

12 Q. Do you know if she called the court?

13 A. She did. She called the court.

14 And then the next morning, when she got my
15 message, she logged in and she called the court
16 and -- logged in, and the payment window to pay the
17 \$350 came up.

18 Q. Okay.

19 A. So -- and so that payment was made.

20 Q. Okay.

21 A. That's -- and it's reflected in the
22 activities report.

23 Q. Lastly, can you turn to Exhibit 8, please,
24 in that notebook? Do you recognize this document?

25 A. Yes.

1 Q. Can you identify it for us, please?

2 A. Yes. This is an e-mail that I sent to
3 Will Morrison, with a copy to my paralegal,
4 Carrie Hurst, a copy to you and a copy to my
5 secretary, Eliza Tito.

6 May I read it? May I read --

7 Q. Yes, please.

8 A. It says, "Will. The problem that arose
9 was that the software would not allow me to file the
10 Complaint. One of the problems" -- oh, I'm sorry.
11 I -- I received -- at the bottom of that exhibit I
12 received an e-mail from Mr. Morrison. It says, "It
13 looks like you missed the filing deadline. What
14 software problems were you referring to? Why did you
15 wait so long to file?"

16 I responded, "Will. The problem that
17 arose was that the software would not allow me to
18 file the Complaint. One of the problems was when I
19 inserted the dollar amount into the window for the
20 523 claim, the system would state that an integer was
21 missing. Despite entering various numbers in various
22 configurations, including with and without dollar
23 signs and commas, the system would not move to a new
24 window.

25 "After a significant amount of time and

1 numerous attempts, I inserted an inaccurate number of
2 2,000, and then it moved to the next window.
3 However, the system would ask whether you want to pay
4 via Internet, waiver or deferral. I could not get
5 the window to open on numerous attempts, thus, the
6 system would still state, pay 350 fee, but without a
7 method to pay.

8 "I backed up and tried numerous times to
9 have the payment window open, but it would not. I
10 also had other similar problems with the software. I
11 discussed the matter" -- and then I said, "I
12 discussed the matter with the court's IT department
13 and was told that the problems and error messages
14 that I received reflect that the software was not
15 operating correctly.

16 "I was told that even though I backed up
17 and tried repeatedly to file, the software would
18 still produce the same errors. I was told that when
19 these problems occur, the best approach is not to use
20 the backup button in the software to start over but
21 to exit out or go back to the first blue bar and
22 start over.

23 "As to timing, I had everything scanned
24 and first attempted to file at 11:35. As filing
25 seemed futile, I sent you an e-mail with a copy of

1 the Complaint. Shortly thereafter I sent the
2 exhibits.

3 "Finally, after nearly 40 minutes the
4 system apparently filed one of the attempted filings
5 of the Complaint without payment. When the system
6 was open this morning a payment window came up.

7 "It is my understanding this is not the
8 first time this has occurred. In any event, I
9 believe the clerk's office will be addressing and
10 disclosing the filing problem that occurred. Steve."

11 Q. And is this e-mail an accurate summary of
12 your experience?

13 A. It is, as I previously testified.

14 MR. KUETTEL: Your Honor, we'd like to
15 move to enter Exhibit 8 into evidence.

16 MR. MORRISON: This document was subject
17 to the motion to strike that we had filed. However,
18 I've also included it as one my own exhibits, so I'll
19 go ahead and allow it. No objection.

20 THE COURT: Well, it was an e-mail sent to
21 you from Mr. Call, sir.

22 MR. MORRISON: Well, it has some
23 references to hearsay from court IT in the second
24 paragraph, but I'm okay allowing it.

25 THE COURT: Okay. Exhibit 8 is received.

1 MR. KUETTEL: Thank you.

2 Q. Mr. Call, if you could quickly turn to
3 Exhibit 9, please. Do you recognize this document?

4 A. I do.

5 Q. Can you identify it for us, please?

6 A. This is an activities report that was sent
7 to me from the court's ECF system.

8 Q. And what does it show?

9 A. You know, these come out a little after
10 midnight each day. So this one came out on the 24th.
11 And it shows activities that occurred on the 23rd.
12 So a number of different cases that I'm involved in.

13 At the bottom of the case it shows the
14 filing of the adversary proceeding. I'm looking at
15 the bottom of the first page. And it says the nature
16 of the action and so forth. And then it says it was
17 modified on April 23rd, 2019, by GCI.

18 And -- and then on the next page it shows
19 a similar docket entry at the top, only this time the
20 docket entry is in the adversary proceeding rather
21 than the bankruptcy case. And it -- again, it just
22 reflects that the Complaint was filed. And then
23 again it shows modified on 4-23 by GCI.

24 And then if you go down to the
25 second-to-the-bottom activity there it indicates --

1 well, above that it shows that the exhibits were
2 filed, but then it -- it has the \$350 payment that --
3 that was made as well. So it's just -- it's
4 reflecting that payment. And it looks like the
5 payment was made at 8:59 in the morning.

6 Q. Great. And can you turn to Exhibit 10,
7 please? Do you recognize this document?

8 A. Yes. Exhibit 10 is an e-mail that was
9 sent by the court -- or, I'm sorry. It was sent by
10 Pay.gov at -- at 9:00 on the 23rd, so the morning
11 after the filing. "Your payment has been submitted
12 to PayGOV and the details are below. If you have any
13 questions or you wish to cancel this payment, please
14 contact CM/ECF help desk."

15 So it's my understanding this e-mail to me
16 and to my paralegal reflects that the payment was
17 made. And this came at 9:00 in the morning. So it
18 correlates with the activity -- the activity report
19 in Exhibit 9.

20 MR. KUETTAL: Your Honor, we'd like to
21 move to admit Exhibits 9 and 10 into evidence,
22 please.

23 MR. MORRISON: No objection.

24 THE COURT: Exhibits 9 and 10 are
25 received.

1 Q. (BY MR. KUETTAL) Mr. Call, can you turn
2 to Exhibit 12, please?

3 A. Yes.

4 Q. Can you identify this for us?

5 A. Yes. This is a excerpt of the docket in
6 Mr. Beal's bankruptcy case.

7 Q. And what does this reflect?

8 A. Well, it reflects various docket entries
9 made in the case. But on its relevant date -- let's
10 see if I can find it. On the relevant date, which
11 would be docket entry number 27, it reflects the
12 entry of the Complaint, the payment of the fee. It
13 indicates it's a claim under -- a nondischargeability
14 claim under 523(a)(6), willful and malicious injury,
15 an objection to the revo -- objection/revocation of
16 discharge under 727 and various subsections. And
17 then it says, "Modified on 4-23, GCI."

18 Q. Okay. Can you turn to Exhibit 13, please?

19 A. Yes.

20 Q. Can you identify this?

21 A. Yes. This -- this is just an excerpt of
22 the docket in the adversary proceeding.

23 Q. What's the significance of this document?

24 A. Well, the sig -- the signif --
25 this document also contains a docket entry on 4-23

1 that's the same, essentially, as the docket entry in
2 the bankruptcy case, reflecting a modification
3 that -- that there was some modification -- or it was
4 modified.

5 And then it reflects, up in the top
6 left-hand side of the first page, that a demand of
7 \$168,000 was entered, which is not a number that I
8 had ever -- that I had ever entered.

9 So it just -- it reflects that -- that
10 there was a modification to the amount that was
11 demanded and -- but it shows the docket entry. It
12 was apparently modified.

13 MR. KUETTAL: Okay. Your Honor, we would
14 like to move to enter Exhibits 12 and 13 into
15 evidence.

16 MR. MORRISON: No objection.

17 THE COURT: All right. So just so the
18 record is clear, I understand -- I understand what
19 Exhibit 12 is and Exhibit 13 are. They are basically
20 the court's docket.

21 The only clarification I would make is it
22 appears that it's the court's docket as of July 18th,
23 2019. Is that correct, Mr. Call? And I'm looking at
24 the upper left-hand corner, the date that these
25 dockets were --

1 THE WITNESS: Printed.

2 THE COURT: -- printed. Well, July 18,
3 2019.

4 THE WITNESS: Right.

5 THE COURT: So they are not -- they are
6 not current.

7 THE WITNESS: They are not current.

8 THE COURT: They are not current. These
9 are the dockets as of July 18, 2019.

10 THE WITNESS: I believe that's correct.

11 THE COURT: Okay. Exhibits 13 and 14 are
12 -- or 12 and 13 are received.

13 Q. (BY MR. KUETTAL) Okay. Mr. Call, can you
14 turn to Exhibit 15? It's the last exhibit in the
15 book and the last one in --

16 A. Yes.

17 Q. What Internet browser were you using when
18 you logged onto the system that night?

19 A. Google Chrome. And I was use -- I was
20 using their most updated version, which is -- in our
21 firm we have an IT department. They handle those
22 types of updating. And they stay right on top of it.
23 And so our -- our browser versions are updated all
24 the time.

25 But -- so the version that I was using was

1 this version 76-06-3809-100.

2 Q. And to be clear and from a foundation
3 standpoint, how did this document come to be?

4 A. I had -- I had the firm print it out.

5 Q. Okay.

6 A. Because we -- Mr. Morrison had asked us to
7 disclose what version of the browser that our firm
8 was using at that time.

9 Q. And it's your testimony that this is the
10 version that you were using?

11 A. Yes.

12 MR. KUETTAL: Thank you. Your Honor, we
13 would like to move to enter Exhibit 15 into evidence.

14 MR. MORRISON: No objection, with the
15 clarification that it's dated 8-12-19 at the top.

16 THE COURT: It is dated 8-12-19 at the
17 top, so what's the --

18 MR. MORRISON: I don't have an objection.

19 THE COURT: Okay. Exhibit 15 is received.

20 Q. (BY MR. KUETTAL) Okay, Mr. Call, one last
21 question for you.

22 Did you contact the court the next day?

23 A. I did.

24 Q. April 23rd?

25 A. I did.

1 Q. What was --

2 MR. MORRISON: Objection, your Honor. If
3 he's going to testify to what the court told him,
4 that's hearsay.

5 THE COURT: All right. Just heads up
6 before you answer, Mr. Call. I think Mr. Morrison's
7 concerned about hearsay. So if you're asking
8 Mr. Call to relate statements that the court made to
9 him, I think that's hearsay. But you can argue when
10 you ask the question why it's not.

11 MR. KUETTAL: Okay. Let me think one
12 second.

13 Q. Mr. Call, what do you recall from that
14 phone call on the morning of April 23rd when you
15 called the court?

16 A. My -- my recollection was that I needed to
17 speak with someone in the IT department and -- and
18 that I needed to reach out to them. And so I did --
19 I wasn't able to reach them that day. I believe I
20 was also informed that -- that Judge Mosier was in
21 Japan on vacation and that the issue couldn't be
22 addressed until he returned.

23 MR. KUETTAL: Okay. Thank you. I don't
24 believe I have any other questions, your Honor.

25 THE COURT: Well, I wasn't in Japan in

1 April, but I was later.

2 MR. MORRISON: Just a quick housekeeping
3 question.

4 THE COURT: That's the issue with hearsay.

5 MR. MORRISON: Just to be on the same page
6 with everybody, a housekeeping question, your Honor.
7 Did we get all 15 of their exhibits admitted?

8 THE COURT: I believe we did.

9 MR. MORRISON: I believe so. I just
10 wanted to make sure.

11 THE COURT: We have them. They are all
12 received.

13 Any cross-examination, Mr. Morrison?

14 MR. MORRISON: Yes. Thanks, your Honor.

15 CROSS-EXAMINATION

16 BY MR. MORRISON:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. I have a question for you about the state
20 court judgment that was referenced before this
21 bankruptcy case was commenced.

22 It's my understanding the state court
23 judgment that you testified that was entered on
24 behalf of State Bank against Mr. Beal and some other
25 parties -- that was a default judgment, correct?

1 A. I believe that's correct. I believe
2 that's the case. I believe it's attached to the
3 Complaint as exhibit -- it's attached to the
4 Adversary Complaint as Exhibit 8.

5 Q. Okay. And it is a default judgment?

6 A. It says Default Judgment.

7 Q. Thank you.

8 Your testimony earlier was that you had
9 the Adversary Complaint prepared before April 22nd,
10 2019?

11 A. No.

12 Q. Okay.

13 A. My testimony was we had commenced drafting
14 the Adversary Complaint but knew we wouldn't finish
15 until we con -- I -- I conducted the 2004 examination
16 of the debtor.

17 Q. Okay. Thank you for that clarification.

18 You at least had a draft of the
19 Adversary --

20 A. Yes.

21 Q. -- Complaint prepared?

22 A. Yes.

23 Q. Okay. And then the documents that we
24 looked at showed that you had received on your desk
25 the exhibits that were supposed to go with the

1 Adversary Complaint by 11:36 p.m. on April 22nd?

2 A. Yes.

3 Q. So you would have logged into CM/ECF after
4 receiving those exhibits?

5 A. They -- those were on my desktop in pdf
6 format before I logged in.

7 Q. Okay. Thank you.

8 So you logged in after 11:36 p.m. on
9 April 22nd, 2019?

10 A. Yes.

11 Q. And April 22nd, 2019, is the deadline for
12 creditors to file an objection to the debtor's
13 discharge in this case.

14 A. It --

15 Q. Midnight on that day, correct?

16 A. I would -- I probably would agree as to a
17 523(a)(6) claim but not to a 727 claim. I mean, it's
18 a legal conclusion, but --

19 Q. Okay.

20 A. My understanding is the debtor had not
21 received a discharge at that time and that the
22 Complaint included objections to discharge but it was
23 the deadline for filing a claim under 523(a)(6),
24 that's correct. That part of it is correct.

25 Q. It's true that you attended the meeting of

1 creditors that was held in the debtor's bankruptcy
2 case, correct?

3 A. Yes. Of course I did.

4 Q. And Exhibit 12 -- your Exhibit 12
5 identifies the 341 meeting of creditors having been
6 conducted on February 20th of this year. Do you see
7 that at the top of Exhibit 12?

8 A. Exhibit 12?

9 Q. Your Exhibit 12 on the right-hand side at
10 the top.

11 A. February 20th, I believe. I don't --

12 Q. You don't have any reason to --

13 A. I believe that that is approximately
14 correct. I -- I think it was noticed for an earlier
15 date and that the 341 was continued. And I think the
16 continued date was -- I think it was about
17 February 20th.

18 Q. Are you just speculating on a continuance?

19 A. Well, can't I figure that out from the
20 court's docket?

21 Q. It's right in the docket, though, right?
22 So I'm asking you, if there's no continuance, you're
23 just speculating on that.

24 A. No, I'm giving you my best understanding.
25 My personal knowledge was that the initial notice had

1 it at an earlier date and that it was rescheduled, I
2 think, until February -- around February the 20th.
3 And the 341 was conducted in Provo, at the library, I
4 believe.

5 Q. If there's no record of a continuance of
6 the 341 date in this case, you're mistaken. Yes?

7 A. You know, whatever the doc -- whatever the
8 doc -- I'm just giving you -- it was my understanding
9 that there was a continuance. If there wasn't, then
10 there wasn't. I wasn't heavily involved at that
11 time, but I did attend the 341 meeting.

12 Q. Okay. I mean, you can take a look at
13 Exhibit 12, if you'd like. It has the docket in this
14 case and there is no indication of any continuance.

15 A. Do you want me to take the time and look
16 at that?

17 Q. No, I --

18 THE COURT: I think the -- I mean, I'm not
19 sure what you are trying to establish, Mr. Morrison,
20 but the 341 meeting was scheduled for February 20th,
21 2019.

22 MR. MORRISON: Thank you.

23 THE COURT: And you testified, Mr. Call,
24 that you attended the 341 meeting.

25 THE WITNESS: I did.

1 THE COURT: Is there any --

2 MR. MORRISON: Just a follow-up question
3 on that.

4 THE COURT: Just like his --

5 MR. MORRISON: Where I'm -- well --

6 THE COURT: When did you attend it?

7 MR. MORRISON: Sure.

8 Q. You were there at the scheduled 341
9 meeting?

10 A. I was.

11 Q. Okay. And you were there representing
12 State Bank?

13 A. I was.

14 Q. You posed questions of the debtor at the
15 341 meeting?

16 A. You are asking me if I did?

17 Q. Yes.

18 A. Yes, I did.

19 Q. Okay.

20 A. He did not answer most of them. You
21 instructed him not to answer, and so I was not able
22 to get much, if any, information.

23 Q. That wasn't the question that I asked you,
24 was it?

25 A. Well, that was my answer.

1 MR. MORRISON: Move to strike, your Honor.
2 It's not responsive.

3 THE COURT: The answer is stricken.

4 Q. (BY MR. MORRISON) You knew when you went
5 to the 341 meeting of creditors that you had
6 approximately 60 days to file an objection to the
7 debtor's bankruptcy discharge.

8 A. I knew when the -- I knew when the -- I
9 don't know if exactly on that day I knew, but I knew
10 in advance that -- that April 22nd was the deadline.

11 Q. And you waited until April 22nd of this
12 year to conduct the debtor's 2004 exam.

13 A. The debtor's -- we sought permission from
14 the court, I think it was the first part of April, to
15 conduct the exam and -- and the -- in order to give
16 the adequate period of notice, that date was the 4 --
17 became the 22nd day of April. I had agreed to extend
18 it to accommodate you and the debtor, and actually
19 had prepared a motion to extend the date if --

20 MR. MORRISON: Again, your Honor, this is
21 nonresponsive. Move to strike.

22 THE COURT: Sustained.

23 Q. (BY MR. MORRISON) I just need you to
24 answer the question that I'm asking. Is that okay?

25 A. Sure.

1 Q. All right. Thank you.

2 All right. Let's go ahead and ask -- or
3 talk about that. At the time of the 2004 exam you
4 testified earlier that you thought it had started at
5 10:00 in the morning but you might -- might allow for
6 a 9:00 time.

7 Let me have you open my exhibit binder, if
8 you would. And I'll have you look at Exhibit B.

9 A. Okay.

10 Q. Can you identify what Exhibit B is?

11 A. It's a series of e-mails -- a string of
12 e-mails.

13 Q. Between you and I?

14 A. Between you and I, copied to a number of
15 people.

16 Q. Okay. And on the very first page, second
17 sentence, it -- it indicates that the 2004 exam was
18 set for Monday, April 22nd, at 9:30 a.m.

19 A. Okay.

20 Q. You don't have any reason to dispute that
21 starting time, do you?

22 A. (No audible response).

23 Q. Okay. This e-mail correspondence goes on
24 to indicate that my office had requested a little bit
25 later starting time that day, at 11:00, to

1 accommodate my -- my client who was traveling from
2 Ephraim.

3 You see that request on page 3, correct?

4 A. Which -- on page 3 of 5? Which line?

5 Q. Page 3. Exhibit -- Exhibit B, page 3 of
6 5, the first two e-mails on that -- on that page.

7 A. Exhibit [sic] 3 of 5. I'm on that page.
8 Which exhibit are you looking at?

9 Q. Okay. There is an e-mail dated April 15
10 at 3:22 p.m.

11 Do you see that e-mail?

12 A. 3:22, I do.

13 Q. And do you see in that a reference to
14 requesting that we start the 2004 exam at 11:00 a.m.?
15 Second-to-last sentence.

16 A. Yeah, let me -- let me read it.

17 I do. I see that communication from you
18 to me.

19 Q. And then your response on April 17th at
20 3:58 p.m., the first sentence reads -- reads what?

21 A. My response to your communication is -- so
22 you're trying to get -- you requested it start at
23 11:00, and my response says, "That is not going to
24 work. However" --

25 Q. Okay. I'm just asking you about the first

1 sentence.

2 A. You want me to read the e-mail?

3 Q. I was just asking you about the first

4 sentence.

5 A. Okay.

6 Q. Your response was that was not going to

7 work.

8 And then we -- we kept it at April 22nd at

9 9:30.

10 If you go to the next page, which is

11 page 4 of 5...

12 A. Okay.

13 Q. You sent me an e-mail on April 17th at

14 6:31 p.m. And the second paragraph says, and I

15 quote, "I cannot grant a later start on April 22nd

16 because, as you know, it is the bar date for the

17 filing of the Bank's Complaint. Thus, I would be

18 forced to work late if the examination runs late."

19 That's what your e-mail says, correct?

20 A. No. It's the first -- that's the first

21 sentence of the e-mail.

22 Q. It's the first sentence --

23 A. But then --

24 Q. -- of the second paragraph.

25 A. But then it goes on and says, "In light of

1 the foregoing, if your client is willing to extend
2 the bar date by even a few days, then we can start at
3 11:00.

4 Q. Okay.

5 A. I -- I -- I guess I just take offense at
6 your trying to somehow nitpick out sentences and take
7 these items out of context to suggest I wasn't
8 accommodating when, in fact, I was accommodating, and
9 I prepared a motion and a stipulation at your request
10 and sent it to you, and you wouldn't respond.

11 MR. MORRISON: Argumentative, your Honor,
12 and nonresponsive to my question. Move to strike.

13 THE WITNESS: I disagree. I think it is
14 responsive.

15 THE COURT: Well --

16 MR. MORRISON: He'll have a chance --

17 THE COURT: Your attorney should be the
18 one making the objection. But I don't -- I'm going
19 to sustain the objection. But doesn't the -- don't
20 the e-mails speak for themselves, Mr. Morrison? I
21 mean, they say what -- I understand Mr. Call's issue
22 perhaps saying, you stopped, you didn't read the
23 whole thing.

24 MR. MORRISON: Sure.

25 THE COURT: But the whole thing is in

1 there. All the e-mail chain is there.

2 MR. MORRISON: Sure. I was just focusing
3 on the fact that he said that he didn't want to work
4 late.

5 THE COURT: I -- I've read the e-mail
6 chain.

7 MR. MORRISON: Okay. Good enough.

8 THE COURT: I know what it says.

9 MR. MORRISON: Yeah.

10 THE COURT: I know that Mr. Call [sic]
11 said, Hey, let's extend the time.

12 And you said, No way. Can we start at
13 11:00?

14 And he said, That's not going to work; I'm
15 going to have to work late if we do. So you started
16 before 11:00, I know.

17 Q. (BY MR. MORRISON) And you were working
18 late on April 22nd, 2019, when you filed the
19 Adversary Complaint -- or at least attempted to file
20 it?

21 A. On April 22nd, that's correct.

22 Q. Okay. I had an opportunity in this case
23 to send you some written questions by e-mail. And
24 one of the questions I had asked you was how many
25 adversary complaints you had filed this year.

1 A. Yes.

2 Q. What was your response to me?

3 A. One.

4 Q. And that one case was this case?

5 A. That's correct.

6 Q. And I also asked you how many adversary
7 complaints you had filed last year.

8 A. Yes.

9 Q. And your answer was?

10 A. None.

11 Q. I want to go back through the sequence of
12 your attempted effort to file the Adversary Complaint
13 in this case. I note when you were testifying you
14 indicated that your first attempt to insert a dollar
15 amount included a comma.

16 Do you remember testifying to that?

17 A. I don't believe so. I believe I said that
18 it included a dollar sign.

19 Q. The testimony is what it is. It's on the
20 record.

21 A. I disagree. That wasn't my testimony.

22 Q. Okay.

23 A. I said that it -- I included a dollar
24 sign, and it may or may not have included a comma.

25 Q. Okay. When were you trained to do filing

1 via CM/ECF?

2 A. I was trained, gosh, many years ago. When
3 the system went over to the ECF system we came to the
4 court. We went through some extensive training.

5 Q. Did you have any other subsequent training
6 after that?

7 A. You mean here at the court? So just
8 anywhere?

9 Q. Well, we can start here with the court,
10 sure.

11 A. I think we did come back and had some
12 follow-up training, yes.

13 Q. Were you trained to put a dollar sign in
14 when you were asked for the entry of an amount?

15 A. I don't recall. You mean back when I was
16 trained?

17 Q. Sure.

18 A. I don't recall that.

19 Q. Okay. Were you trained to put a comma in
20 that window when you were asked for a demand amount?

21 A. Back when I was trained?

22 Q. At any time when you were trained, were
23 you ever trained to put a comma?

24 A. I have no recollection of that.

25 Q. Do you have any recollection of ever being

1 trained to put a decimal point in as a -- as a demand
2 amount?

3 A. I -- I don't recall being trained. I
4 don't have a recollection of my training on that
5 specific issue.

6 Q. Let's have you turn to your Exhibit 3,
7 page 17.

8 A. Okay.

9 MR. MORRISON: And before we get there,
10 Honor, may we receive our Exhibit B into evidence?

11 THE COURT: Any objection, Mr. Call? Oh,
12 I'm sorry.

13 MR. KUETTEL: No objection, your Honor.

14 THE COURT: Exhibit B received.

15 MR. MORRISON: All right. Very good.

16 MR. KUETTEL: No offense.

17 THE COURT: I -- I almost forgot you
18 weren't the attorney on this, Mr. Kuettel.

19 MR. MORRISON: All right.

20 Q. So, Mr. Call, we're having you look at
21 your Exhibit 3, and specifically your page --

22 A. You mean the -- the Bates Exhibit 3?

23 Q. Yes.

24 A. I -- I follow you.

25 Q. Okay. Thank you. Your exhibit binder

1 three and page 17.

2 A. Yes.

3 Q. Which has the window for the demand amount
4 with the parentheses, the dollar sign and three
5 zeros.

6 Do you see that?

7 A. Yes.

8 Q. And then below that there's some different
9 numbers --

10 A. Yes.

11 Q. -- indicating 2,000, 200 and 200,000?

12 A. Yes.

13 Q. During your attempts to file the Adversary
14 Complaint you did testify, though, that you had
15 attempted to insert a number there with a comma at
16 some point.

17 A. I went through so many permutations, with
18 dollar signs, without dollar signs, with commas,
19 without commas, I -- I went through many, many
20 permutations.

21 This document here is -- is a sample of
22 that page. And those numbers came up -- when I went
23 in, Google brought those up. It remembered those
24 numbers. So this document actually showed when I
25 went into that. Google brought up those three

1 numbers. So we printed out this as a screenshot to
2 show what -- what reflected. But those numbers were
3 numbers that I had entered.

4 Q. When was the screenshot prepared or done?

5 A. This was done before -- before the
6 exhibits. I -- I'm not suggesting -- well, these
7 exhibits in Exhibit 3 are not pictures of the actual
8 filing.

9 Q. Okay. That's what I'm asking. These were
10 not contemporaneously created, correct?

11 A. Yes.

12 Q. These were created after the fact?

13 A. They were.

14 Q. And we don't see any input here with
15 dollar signs or commas or decimals, do we?

16 A. No, this is just a print screen. When the
17 print screen -- when we went to print the print
18 screen, Google brought up those last three numbers.

19 Q. All right. The only error message that
20 you've testified about receiving in court today was
21 an error message that you claim that you received
22 indicating that -- case opening canceled, writing
23 answer or writing record.

24 A. Well, that's inaccurate.

25 Q. Okay. Tell me about the error message.

1 Tell me what it said.

2 A. In the demand wind -- box -- in the demand
3 box, as I would go through the various permutations
4 with different numbers, it would respond each time
5 with an error message that said integer missing.

6 Q. Okay.

7 A. The error message about adversary --
8 there's a case open failed. Writing answer record
9 came up as an error to the payment screen when I
10 tried to make the payment. So there were two
11 different error messages. They came up at different
12 times. It was always the same error message under
13 the demand window, and it was always the -- when it
14 would come up -- it didn't always come up on the
15 payment window, but when it -- if I clicked it a
16 number of times, it would come up. But that was on
17 the paid \$350 window.

18 Q. Okay. So tell me about the error message
19 when you attempted to -- when you accessed the
20 payment window. Tell me exactly what that error
21 message was. Case opening canceled writing...

22 A. The payment window?

23 Q. Yes. What was the error message for that?

24 A. Case -- it was either case open -- or case
25 opening failed, writing answer record.

1 Q. Okay. Now, in your Exhibit 8 --

2 A. The Bank's Exhibit 8?

3 Q. Yes. Thank you. Bank's Exhibit 8. You
4 spent a little bit of time reading through in court
5 today the problems that you encountered, but there's
6 no mention at all whatsoever to this second error
7 message that you're claiming you encountered as far
8 as case opening failure or case opening failed,
9 writing answer record. That's not indicated in this
10 e-mail, is it?

11 A. I don't see it in this e-mail.

12 Q. The second paragraph of this same exhibit,
13 the first sentence, where it says, "I discussed the
14 matter with the court's IT department and was told
15 that the problems and the error messages that I
16 received reflect that the software was not operating
17 correctly" -- who told you that?

18 A. I believe it was Russell Jones.

19 Q. Okay. You remember that we had a meeting
20 with the bankruptcy court staff in August in a
21 training room here, correct?

22 A. Yes. Yes.

23 Q. And you remember I asked -- well, first of
24 all, Russell Jones was in attendance at that meeting?

25 A. Yes, he was.

1 Q. And who else was in attendance?

2 A. Gary Gfeller, Gloria and Janene.

3 Q. Okay. And I asked them specifically which
4 one of them told you that -- which one of them told
5 you this statement, and none of them said that they
6 had told you that.

7 A. I disagree.

8 Q. Okay. Well, we'll be able to hear from
9 them today.

10 A. I hope.

11 Q. Is it your understanding that an adversary
12 complaint is only accepted for filing when you remit
13 the payment -- the filing fee?

14 A. You know, that's -- that's a good
15 question. It -- because that last window -- it's
16 been turned around, but because it says open
17 adversary paid 350, I was uncertain whether the 350
18 had to be paid to open the adversary. But because
19 the message came that said case -- case open failed,
20 writing answer record, I was uncertain -- I -- it's
21 my understanding now that the payment isn't needed,
22 but at the time I was uncertain.

23 Q. Okay.

24 A. I thought the payment needed to be made at
25 that time, but I wasn't sure where in that timeline

1 the adversary actually opened.

2 MR. MORRISON: I'm almost done, your
3 Honor. Just a few more questions.

4 Q. On your e-mail to me, which is the State
5 Bank's Exhibit Number 4...

6 A. Okay.

7 Q. There's no indication on that e-mail that
8 it was attempted at 11:58. It says 12:00 a.m. on the
9 document.

10 A. Yeah.

11 Q. Does it say 11.58 p.m. on the document?

12 A. The document doesn't say that.

13 THE COURT: Which exhibit are we looking
14 at?

15 MR. MORRISON: We're looking at Exhibit 4.

16 THE COURT: Okay.

17 MR. MORRISON: Bank's Exhibit 4.

18 THE WITNESS: I thought I had testified
19 that I started to go through the process of sending
20 that e-mail and that I -- before 12:00, and then I
21 sent it, and at the time it was sent it was 12:00.
22 But I didn't start to send it at 12:00 because it may
23 take a minute or two to get it and go through -- you
24 know, bring up the -- the browser and send the
25 e-mail. So it was probably 11:58 or 11:59, and I

1 attempted to send it at midnight.

2 Q. But the document --

3 A. But I sent it at that time.

4 Q. My question for you is, the document
5 doesn't say 11:58 or 11:59.

6 A. No, it says --

7 Q. It says 12:00 a.m.

8 A. It does.

9 Q. And sending me an e-mail is not the same
10 thing as filing a pleading with the court, is it?

11 A. It -- of course not.

12 Q. Okay.

13 A. But I thought it was the proper thing to
14 do when -- because the filing system wouldn't work.

15 Q. The e-mail address on -- for me -- for my
16 office on Exhibit 4 is different than the e-mail
17 address on Exhibit 5, is not -- is it not?

18 A. It appears to be.

19 Q. Okay.

20 A. Is that not your e-mail?

21 Q. Those are different e-mail addresses,
22 aren't they?

23 A. Are they yours?

24 Q. No. The first one is not.

25 A. Oh.

1 Q. The second one is.

2 You've seen the -- the case law that we've
3 cited in our pleadings in this case that indicates
4 that the filing of an objection to discharge and the
5 filing of an objection to dischargeability, the
6 deadline for those filings is a hard and fast
7 deadline. You're familiar with that case law?

8 A. I've -- I'm familiar with case law that's
9 been briefed.

10 Q. Okay. And yet you waited until almost the
11 very last minute to attempt to file your adversary
12 case in this -- in this particular case.

13 A. No, that's not accurate.

14 MR. MORRISON: Okay. Nothing further,
15 your Honor.

16 THE COURT: All right. Mr. Kuettel, is
17 there any redirect?

18 MR. KUETTAL: Yes, just a few questions,
19 your Honor.

20 REDIRECT EXAMINATION

21 BY MR. KUETTEL:

22 Q. Mr. Call, were the exhibits placed on your
23 desk or your desktop at 11:36 p.m.?

24 A. What I meant to say, that they were on my
25 computer desktop, not on my desk, but on my screen,

1 ready to be filed.

2 Q. Thank you.

3 And if you can turn to Exhibit 8 and read
4 the first sentence of that second paragraph again.
5 You can just read it to yourself.

6 Is it your understanding that that
7 references multiple error messages?

8 A. Yeah, it -- I -- it does. I indicated
9 that -- that -- it's sacri -- I discussed with the
10 court's IT department, was told that the problems and
11 the errors messages that I received reflect the
12 software was not operating correctly. Messages.

13 MR. KUETTEL: Thank you.

14 No more questions, your Honor.

15 THE COURT: All right.

16 MR. MORRISON: Nothing more.

17 THE COURT: One -- I have one question,
18 Mr. Call, that wasn't clear from the testimony.

19 Do you know when the Complaint was filed?

20 THE WITNESS: Yes. I -- I believe it was
21 filed three times. I believe it was filed twice on
22 the 22nd and then once on the 23rd, shortly --

23 THE COURT: What do you base that on?
24 Maybe I'll re -- restate my question.

25 Do you know when the court reflects --

1 when the court's docket reflects that the Complaint
2 was filed?

3 THE WITNESS: My understanding is the
4 Court's docket that -- that were introduced shows
5 that they were modified, but my understand -- I don't
6 know what they reflected before they were modified.
7 But given that the payment wasn't needed to make the
8 filing -- again, I believe that I filed the Complaint
9 twice on the 22nd. Then I sent my e-mails. Then I
10 went back and filed the third time.

11 THE COURT: All right. So maybe you don't
12 know. All right. I'm going to take a brief recess.
13 We've been at this an hour and a half.

14 THE CLERK: All arise.

15 (Recess taken.)

16 THE CLERK: Court resumes in session.
17 Please be seated.

18 THE COURT: All right. So we're done with
19 Mr. Call, correct, Mr. Morrison?

20 MR. MORRISON: Yes. Thank you, your
21 Honor.

22 THE COURT: Your next witness, Mr. Call?

23 MR. CALL: Yes. We would like to speak
24 with Gloria Igo.

25 THE COURT: All right. I guess we'll have

1 to see if Gloria is here. I'll take a quick recess.

2 THE CLERK: All arise.

3 (Recess taken.)

4 THE CLERK: Court resumes in session.

5 Please be seated.

6 THE COURT: All right. Ms. Igo, would you
7 please come forward and be sworn?

8 THE CLERK: Step forward right here and
9 raise your right hand.

10 (Witness sworn.)

11 THE CLERK: Have a seat at the witness
12 stand. State and spell your name for the record,
13 please.

14 THE WITNESS: My name is Gloria D. Igo.

15 MR. CALL: May I proceed, your Honor?

16 THE COURT: Yes.

17 GLORIA D. IGO,

18 called as a witness, being first sworn,

19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. CALL:

22 Q. Ms. Igo?

23 A. Igo.

24 Q. Igo?

25 A. Uh-huh.

1 Q. Ms. Igo, you work as a staff member here
2 in the clerk's office, correct?

3 A. Yes.

4 Q. And how many years have you been here?

5 A. Twenty-six years.

6 Q. Okay. A long time. And are your initials
7 GCI?

8 A. Uh-huh.

9 Q. And --

10 A. Yes.

11 Q. And what are your duties currently?

12 A. I currently am a senior clerk. If my
13 supervisor is not here, I step in. There's two of
14 us.

15 Also I'm a case administrator. So I have
16 my own digits. And I look over what the cases -- the
17 digits that I have. And we check the new cases too.
18 Those get divided in the morning either by me or the
19 other senior clerk. We get those out to whoever is
20 here.

21 Q. And who is the other senior clerk?

22 A. Her name is Mara.

23 Q. Mara?

24 And were you doing -- were you performing
25 those same duties on April 23rd of this year?

1 A. Yes.

2 Q. Okay. And do you have a recollection --
3 do you occasionally go in and make corrections to
4 docket entries that are entered by filers?

5 A. We do that all the time, yes.

6 Q. And how frequently do you amend a docket
7 entry?

8 A. Every day, if there is a problem with it.

9 Q. So normally you would be amending a docket
10 entry at least daily?

11 A. Yes.

12 Q. Would you be the primary person to amend
13 those dockets -- docket entries, or is there someone
14 else?

15 A. There is about 10 of us, 12 of us.

16 Q. That will amend docket entries?

17 A. Yes. It depends on the digits. The range
18 of digits that you have, we will look at those cases.

19 Q. And when you say "the range of digits,"
20 are you talking about the case number?

21 A. It is the last two -- yeah, the -- the --
22 yes, you're right, the case number.

23 Q. So you're assigned a certain range of case
24 numbers to oversee?

25 A. It is the last digits of a case number.

1 Q. Okay. And what are your -- what are your
2 digits?

3 A. Right now it's 36 to 44.

4 Q. From 36 to 244?

5 A. Forty-four.

6 Q. Forty-four. Okay.

7 A. But that changes, too. If somebody is not
8 here, then we need to cover for those digits too.
9 And I believe that day that adversary proceeding was
10 someone else's case, so I -- I QC'd that case.

11 Q. I'm sorry, I didn't understand you. You
12 think that that case --

13 THE COURT: Excuse me.

14 So, Ms. Igo, you referenced "that day,"
15 and I know that you know that we're talking about
16 April 23rd, but it hasn't been stated in the
17 questioning to you yet.

18 THE WITNESS: Okay.

19 THE COURT: So -- I'm just trying to help
20 here.

21 MR. CALL: Yeah.

22 THE COURT: What you do all the time is
23 something that you assume people understand.

24 THE WITNESS: True.

25 THE COURT: So just -- we'll let

1 Mr. Call -- try and follow Mr. Call, because he's --
2 I think he has what he wants to ask and -- but we do
3 need to make the record clear, because eventually he
4 is going to get around to the adversary proceeding
5 that is at issue here.

6 THE WITNESS: Okay.

7 THE COURT: And I think he's just trying
8 to get to that through the questioning.

9 THE WITNESS: Okay.

10 MR. CALL: I am.

11 Q. So in a given single day, can you tell me
12 how many -- just approximate how many amendments you
13 would make to a docket entry.

14 A. I couldn't say that, really.

15 Q. Would it be more than five?

16 A. You mean to one case?

17 Q. No, no, all the cases in a single day.

18 A. Yeah.

19 Q. More than 10?

20 A. Yes.

21 Q. More than 20?

22 A. Yeah.

23 Q. Okay. And do you coordinate with anyone
24 else about -- in making these amendments, you make
25 some corrections, do you not?

1 A. Yes.

2 Q. And do you coordinate with any other
3 person regarding the types of errors or corrections
4 that you are making?

5 A. Some of them, yes.

6 Q. Okay. And who would that be?

7 A. Our supervisor. Sometimes, if there is a
8 hearing, then we will do the -- I cannot speak -- the
9 scheduling clerk, sometimes the judges.

10 Q. Okay. So do you know -- are there
11 occasions when you go through and you see your -- you
12 see corrections that need to be made and you see them
13 repeatedly, you make a note of that?

14 A. Well, yeah, we make a note of it.

15 Q. And you report that to your senior
16 supervisor?

17 A. We don't need to do a report every time,
18 no.

19 Q. You don't. Okay. So do you make a
20 recommendation, I'm making a lot of corrections to
21 these entries -- is there some reason for that?

22 A. Sometimes, yes, because they have them --
23 went to the wrong -- wrong thing, or maybe they've
24 used the wrong event. Sometimes they have used a --
25 capture a wrong image.

1 THE COURT: So, Mr. Call, what is it you
2 are trying to establish?

3 MR. CALL: So -- I mean, I'd like to go
4 back and ask her about amendments made to the docket
5 entries.

6 THE COURT: Right, because some of the
7 questions you are asking her are perhaps beyond the
8 scope of her knowledge or her decision. I mean, I've
9 been here ten years; I know what the court does.
10 Now, I don't know on a daily basis, but I know that
11 we have what are called case administrators, and they
12 are quality control. And what they do is they look
13 at what has been filed, and they see if there are
14 certain errors.

15 And if there are standard errors, they are
16 trained to treat the standard errors in a consistent
17 way.

18 And then there might be some that are not
19 the standard errors. And as Ms. Igo has testified,
20 if she has a question about something that is not a
21 standard error, she would ask a supervisor, and
22 sometimes it might even come up to chambers. It
23 might come to me.

24 MR. CALL: Thank you.

25 THE COURT: Hey, we have this issue.

1 So -- I mean, that's the background of what Ms. Igo
2 does, and I can almost take judicial notice --

3 MR. CALL: Notice of that.

4 THE COURT: -- notice of that. I mean,
5 that's what the court does.

6 MR. CALL: Will you take judicial notice
7 of that?

8 THE COURT: Yes. I guess you're all done.

9 MR. CALL: Okay. So...

10 THE COURT: Now that didn't tell you that
11 much about what Mr. Jones does.

12 MR. CALL: Right.

13 THE COURT: I -- I can't help you out,
14 Mr. Jones.

15 MR. CALL: Okay.

16 Q. Well, let me ask you if you would look to
17 what's been marked as the Bank's exhibit. There is
18 an exhibit book right here. This first book.

19 A. Okay.

20 Q. Yeah.

21 Could I have you look at Exhibit 12? Or
22 turn to Exhibit 12. And then down on the bottom of
23 the first page, on docket entry number 27 -- if you
24 could focus on that. I'm sorry, it's the second
25 page. So Exhibit -- Exhibit 12, page 2.

1 A. Page 2 from the bottom or from the top?

2 Q. Page 2, the bottom entry right here. It
3 says 27.

4 THE COURT: It's on the very bottom
5 right-hand corner, Ms. Igo. There's --

6 THE WITNESS: Okay.

7 THE COURT: -- two small numbers.

8 THE WITNESS: Oh, okay.

9 THE COURT: 2/6, so that's 2 of 6.

10 THE WITNESS: Okay.

11 THE COURT: So that's the page. Correct,
12 Mr. Call?

13 MR. CALL: Yes.

14 Q. So, unfortunately, it -- it covers over to
15 the next page, but if you'll turn to the next page
16 there --

17 THE COURT: So docket entry number 27.

18 MR. CALL: Yeah.

19 Q. Will you look at that docket entry and
20 tell me if you made changes to that docket entry?

21 A. Yes.

22 Q. And how do you know that you did?

23 A. Because this has my initials and it says
24 modified by me on 4-23.

25 Q. And when you make docket entries, do you

1 have a journal that you keep in handwriting or on the
2 computer as to the docket entries that are changed?

3 A. No, there is a log on our computers.

4 Q. You have a log?

5 A. It's on the computers. It's -- it's
6 automatically entered.

7 Q. The docket -- I'm -- what does the log
8 reflect?

9 A. It has every entry you done on that day.

10 Q. Okay. So do you have a copy of that log?

11 A. Yeah. If I print one, yes.

12 Q. Okay. I thought when we asked -- when we
13 met and I asked if you had copies of the docket
14 entries before they were modified -- I thought you
15 told me that you did not.

16 A. Yeah, I did. I did say --

17 Q. Can you provide those to me -- to the
18 court?

19 A. Probably I could bring them, yes.

20 Q. Could you? Okay. So am I to understand,
21 then, that before you made this -- the docket entries
22 to this docket number 27, that -- that you had the
23 original docket entries before they were modified?

24 A. Yeah. I have a docket printed. That's
25 where I have the docket. Just the same as this I

1 will have. And then I will have a copy of the one --
2 adversary proceeding.

3 Q. Okay.

4 A. Just -- not -- not the pleading itself,
5 but just the docket of the adversary proceeding.

6 Q. So if there were -- if the docket had a
7 certain demand amount or a certain description in it,
8 you -- you believe that you have a copy of that?

9 A. I believe I do, yeah.

10 Q. Have you looked to see that you would have
11 copies of those documents on April -- that occurred
12 on April 22nd of 2019?

13 A. I did when we met the first time. I keep
14 my -- my logs in a file. I could go back and see if
15 I still have them, because I usually keep them a
16 year.

17 Q. It was -- again, it was my understanding
18 when we spoke that you didn't believe you still
19 had --

20 A. No, I did say that I have them.

21 Q. You do have them?

22 A. Uh-huh.

23 Q. Okay.

24 A. At that time.

25 Q. Okay. Could you check and see if you

1 still have those?.

2 A. Yes.

3 Q. Okay. So will you turn to --

4 THE COURT: Well, I guess I'm going to
5 have to take a recess to let her do that.

6 MR. CALL: Could I have her go get them?

7 MR. MORRISON: Is that something she could
8 get right now or is that -- I mean, what kind of
9 delay are we going to be looking at?

10 THE COURT: Yeah, I think if she's got
11 them, she can get them in 10 --

12 THE WITNESS: Yeah.

13 THE COURT: -- or 15 minutes.

14 THE WITNESS: Uh-huh.

15 THE COURT: I'm assuming that what we have
16 in the court is we have an electronic trail, just
17 like Mr. Call's Exhibit Number 1 -- not exactly like
18 that, but a metadata. But it's even -- it's less --
19 it's simpler than metadata. But we have a tracking
20 of what changes are made to the docket. So I'll take
21 a brief recess.

22 THE CLERK: All arise.

23 (Recess taken.)

24 THE CLERK: Court resumes in session.

25 Please be seated.

1 THE COURT: All right. Before we
2 continue, maybe we should talk about the time we're
3 going to have. I don't think we're going to finish
4 today. I'm not going to go past 5:00. I -- my staff
5 has lives to live.

6 UNIDENTIFIED SPEAKER: Right.

7 THE COURT: So I understand parties have
8 time tomorrow afternoon at 1:00. Is that correct?

9 MR. CALL: Yes.

10 MR. MORRISON: Yes, your Honor.

11 THE COURT: And -- so I don't know that
12 Mr. Beal needs to be here. He's welcome to be here,
13 but I -- I understand he's come from Ephraim, and if
14 you find it entertaining, you can come, Mr. Beal. If
15 you don't, I don't -- you don't intend to call
16 Mr. Beal on this issue, correct?

17 MR. MORRISON: No.

18 THE COURT: So what I'm thinking is let's
19 finish up with Ms. Igo and then we'll call it a day
20 and start tomorrow at 1:00.

21 MR. MORRISON: Okay.

22 MR. CALL: Okay.

23 THE COURT: Ms. Igo, if you would please
24 retake the stand.

25 And have you been provided the exhibits?

1 Have you seen them at all?

2 MR. CALL: No.

3 THE COURT: Oh. All right. Well, maybe I
4 should take -- I thought you had seen them. Maybe
5 I'll take --

6 MR. CALL: Oh, it's just this one page. I
7 haven't seen this log.

8 THE COURT: Okay.

9 MR. CALL: Could we have it --

10 THE COURT: Yes, I'll take a brief recess
11 so you can see what it is and form your questions.

12 Court's in recess.

13 THE CLERK: All arise.

14 (Recess taken.)

15 THE CLERK: Please be seated.

16 THE COURT: All right, Mr. Call.

17 MR. CALL: Okay.

18 Q. So in the -- just in the break, just for
19 the record, we've added two exhibits, Exhibit 16 and
20 Exhibit 17. And do you have those exhibits in front
21 of you?

22 A. Yes, I do.

23 Q. Okay. Could I ask you to look first at --
24 at what's been marked as Exhibit 16 --

25 A. Uh-huh. Yes.

1 Q. -- the Bank's exhibit?

2 Can you describe what this document is?

3 A. This is the log of all the things that I
4 do every day. It shows any changes that I made to
5 any case.

6 Q. Okay. And so this would be an excerpt of
7 what you did on April 23rd?

8 A. What was that again?

9 Q. This would be a part of the -- of what you
10 did on April 23rd?

11 A. Yes.

12 Q. Okay. But it wouldn't include everything
13 you did on the 23rd, would it?

14 A. No.

15 Q. Okay. So there -- there are other cases
16 that you logged on that date, but this is the page
17 that deals with State Bank; is that correct?

18 A. Yes.

19 Q. Okay. And then could I ask you to -- to
20 look on that exhibit and go down to the adversary
21 that's four rows down that is 19-02043?

22 A. Yes.

23 Q. Okay. That's the Adversary Complaint
24 number, correct?

25 A. Correct.

1 Q. And could you indicate -- those entries to
2 the right that say edit case and/or statistical data,
3 demand changed from 200,000 to 6 -- to 168, is that
4 what you type in -- did you type that into the log?

5 A. No.

6 Q. Okay. Who -- who typed that into the log?

7 A. The computer does that itself. I just
8 changed the -- the demand amount, and I entered the
9 727. I was looking at your pleading and that there
10 was two, the 523 and the 727. So I determined
11 something was missing, so I added that. But it's in
12 a different form, and the computer does all of this
13 by itself. I don't know how it's done.

14 Q. So do you enter that into the computer,
15 and then it generates the log? I'm just trying to
16 understand --

17 A. Yes.

18 Q. -- what you do to -- that results in this
19 log.

20 A. Yeah.

21 Q. You write it -- hand write it or do you
22 enter it?

23 A. I enter in the computer, and then
24 something in the background does this.

25 Q. Okay. So this isn't your language that

1 we're looking at?

2 A. No.

3 Q. Do you have the language that you used --
4 that you input into the computer system?

5 A. No. It just go to --

6 THE COURT: I think she testified the
7 language that she put in.

8 THE WITNESS: Yes.

9 THE COURT: She put in 168 and she put in
10 727 CDE.

11 MR. CALL: Okay.

12 Q. And then the computer generated those
13 changes?

14 A. Yes.

15 Q. But you put it in in -- in a different
16 form, and then the computer printed this log?

17 A. Yes.

18 Q. Okay. And so is it accurate -- where it
19 says edit case and statistical data, is that
20 something that you -- you put in initially or not?

21 A. I only changed the demand amount.

22 Q. Okay. So you changed the demand amount --
23 so it's accurate that -- that the demand amount was
24 changed from 200,000 to 168?

25 A. Uh-huh.

1 Q. Okay. And then the second -- the second
2 nature of the suit was changed from blank to
3 objection, revocation of discharge?

4 A. I added.

5 Q. You added that?

6 A. Yeah.

7 Q. So you reviewed the Complaint when you
8 made these changes?

9 A. Yes.

10 Q. Okay. And so is that why that on the
11 Bank's Exhibit 13 it shows, at the top of the docket,
12 that the demand is 168,000?

13 A. Yes.

14 Q. Okay. That came about because of your
15 change, correct?

16 A. Correct.

17 Q. The docket -- the docket didn't ever
18 reflect the 200,000, did it?

19 A. The docket --

20 Q. The top -- I'm sorry. Not the docket,
21 but -- well, the docket sheet, Exhibit 13, in the top
22 left-hand corner, there's not an earlier version of
23 that document that looks like it is the 200,000, is
24 there?

25 A. The only one I have is the one that I

1 provided to you. This is the only thing I have.

2 Q. Okay. So when you make the change, it
3 just automatically updates the docket. You didn't
4 have to go into the docket and change the demand on
5 the docket itself, did you?

6 A. Well, I don't go into the docket, I go to
7 something else.

8 Q. Okay. And it carries over to the docket?

9 A. Yes.

10 Q. So you're not certain whether the \$200,000
11 demand was on that docket --

12 A. No.

13 Q. -- before you made the change or not?

14 A. I have what it was here.

15 Q. Okay.

16 A. This is what I saw on the --

17 Q. Are you referring to the Bank's
18 Exhibit 17?

19 A. Correct, and it had, like, 2 million? Is
20 that what it is?

21 Q. Yeah. Can you turn -- can you look at
22 Exhibit 17 and -- yeah. Okay. I see what you are
23 saying. Okay.

24 A. On...

25 Q. The demand at the top there, I see what

1 you've got, 20 million. Okay.

2 Okay. And then --

3 THE COURT: I guess that's the answer to
4 your last question.

5 MR. CALL: Yeah.

6 Q. So the -- and then the -- where it says
7 flags on the next row, is it my understanding that
8 those are flags that you put into the system because
9 there was a claim for objection to discharge --

10 A. That's right.

11 Q. -- or revocation -- objection/revocation
12 to discharge?

13 A. Yeah. Every case I have the same place --
14 it has to have a flag or have a flag at some point,
15 some --

16 Q. And did you enter -- so you entered that?

17 A. Yes.

18 Q. Okay. Thank you.

19 And then the next row there it says,
20 Update record. Can you explain that row?

21 A. Update record. Probably that is when I
22 typed in the number one entry at the
23 (indistinguishable) and update the suit -- the --
24 4 -- 727.

25 Q. Okay.

1 A. Do you have a copy of that?

2 Q. Let me ask you here, just in closing -- I
3 have just a couple more questions for you.

4 Could I get you to look -- I have these
5 exhibit -- or these exhibits here on these big boards
6 in front of you. Can you see those?

7 A. Uh-huh.

8 Q. Okay. I'd like to ask you if you would
9 look at the -- this one that says Exhibit 14 that's
10 highlighted in yellow.

11 A. Uh-huh.

12 Q. Can you see that?

13 A. Yeah.

14 Q. Can you see it there?

15 Do you see over to the right side there in
16 yellow in the -- in the far column?

17 A. Yes.

18 Q. It says -- can you read it for me?

19 A. This is a temporary log entry to handle
20 timing issues with docketing the same prevent many
21 times, and it gives a number, 22196349.

22 Q. Okay. What -- what is -- have you seen
23 that entry before?

24 A. No.

25 Q. You -- and in your years of being here,

1 you've not seen that kind of entry?

2 A. No. I think that's IT or somebody else.

3 I don't know.

4 Q. So you're not able to tell us what the
5 earlier docketing events were?

6 A. No. I -- I don't know any of that.

7 Q. You don't have any of that.

8 You're familiar with the transaction log,
9 however, aren't you, that report?

10 A. Yes.

11 Q. And that's a report that's generated by
12 this -- the ECF system, correct?

13 A. Yeah. My part, though.

14 Q. Okay.

15 A. I don't know that part.

16 Q. Okay. And then could I get you to look at
17 Exhibit 11?

18 A. Uh-huh.

19 Q. Do you see there the -- the part that's
20 highlighted in yellow?

21 A. Yes.

22 Q. And let's just go across that column. Do
23 you see how -- it lists the lead bankruptcy case,
24 correct?

25 A. Yes.

1 Q. And then is the AP -- does that stand for
2 adversary proceeding?

3 A. Uh-huh.

4 Q. And then it just lists the parties and the
5 attorneys, correct?

6 A. (No audible response.)

7 Q. And then it indicates it's before the
8 Honorable Judge Mosier.

9 And then the next column there, it has a
10 file date and an entered date. Could you explain for
11 me and for the Court what those dates are reflecting?

12 A. I don't know what it means by enter -- I
13 don't do any of that, really, so -- I -- I don't
14 know.

15 Q. You don't know.

16 A. No.

17 Q. Have you ever seen that before, where the
18 file date is different than the enter date?

19 A. No, I never really looked, really.

20 Q. Okay.

21 A. This is not really my part.

22 Q. It's not within your -- your duty?

23 A. Yeah.

24 Q. And so you don't work regularly with
25 these -- with the case report?

1 A. Not with that -- not looking at that, no.

2 Q. When you say "that," are you pointing to
3 this exhibit --

4 A. The entry in the file, that report, I
5 don't know.

6 THE COURT: Your Exhibit 11.

7 MR. CALL: The Bank's Exhibit 11.

8 Q. You -- so you don't have any understanding
9 as to what those dates would mean?

10 A. I don't know why they are different. I
11 don't understand.

12 Q. Okay. Are there any other documents that
13 you have that would relate to this -- the filing of
14 the adversary proceeding?

15 A. No.

16 Q. Would there be any documents in your
17 possession or control that would explain these
18 earlier docketing events that --

19 A. No.

20 Q. -- were repeated?

21 A. No, I -- the only thing that I will have
22 is when I am ready to do -- to check the case that I
23 always file a credit and it will give you a time --
24 the time that I run that report, which it was 9:19 is
25 when I run the report.

1 Q. Okay. And when you -- when you made these
2 edits, the -- the \$350 payment amount had been made,
3 had it not?

4 A. I guess. Otherwise, I would have sent a
5 fees due (indistinguishable).

6 Q. Well, will you look at the Exhibit 17?

7 A. Yeah.

8 Q. Will you look at the -- the top row there?
9 It -- my understanding is that's a receipt for the
10 \$350 payment. Correct?

11 A. Yes.

12 Q. Okay. So the court received the payment;
13 is that correct?

14 A. Yeah.

15 Q. And then do you generate the notice
16 regarding the filing of the Complaint?

17 A. No.

18 Q. Who -- who -- who -- does that trigger
19 automatically through the court system?

20 A. It's automatically, yeah.

21 Q. Okay. And that's the notice that goes out
22 indicating that there's been an objection to the
23 file, correct?

24 A. Yeah, I think that's what it says on it.

25 Q. Well, do you understand what that notice

1 is?

2 A. Yes.

3 Q. Okay. And that went out because of the
4 flag that you had put onto the system, correct?

5 A. I don't know. I think that went before.
6 I think it goes with -- that will be Gary. He knows
7 that. I don't know that part.

8 Q. Okay. And then the summons issues
9 automatically, correct?

10 A. Yes.

11 Q. And so then the court issued the summons?

12 A. It's -- it's issued automatically.

13 Q. Okay. And it did issue, correct?

14 A. It looked like it was there, yes.

15 MR. CALL: Okay. Just one minute.

16 I believe that's all I have for her, your
17 Honor.

18 THE COURT: All right.

19 Any questions, Mr. Morrison?

20 MR. MORRISON: Yes. I don't have a lot.
21 It should be fairly quick.

22 THE COURT: All right.

23 CROSS-EXAMINATION

24 BY MR. MORRISON:

25 Q. Good afternoon.

1 A. Hi.

2 Q. You testified that it's part of your
3 regular duties as an employee of the bankruptcy court
4 to make changes to the docket entries?

5 A. Yes.

6 Q. And just to be clear, you would not change
7 the filing date of the case; is that correct?

8 A. I cannot -- I cannot change that.

9 Q. That's something you would never change?

10 A. We cannot change.

11 THE COURT: She's testified she can't.

12 MR. MORRISON: Okay. Thank you.

13 Q. Were you contacted by Mr. Call or anyone
14 from his office to look into potential problems that
15 he was -- reported with respect to the timing of the
16 filing of the Adversary Complaint in this case?

17 A. No, not until we got together in that
18 meeting.

19 Q. Okay. Thank you.

20 There is an e-mail that we have as an
21 exhibit from the Bank which is Exhibit 8. Can you
22 turn to that for just a moment?

23 THE COURT: So what are you going to ask
24 her about this, Mr. Morrison?

25 MR. MORRISON: I just want to make sure

1 that she wasn't the one that --

2 THE COURT: She wasn't. She already said
3 she never talked to Mr. Call until she met with him a
4 couple of weeks ago.

5 MR. MORRISON: Okay. I just wanted that
6 on the record.

7 THE COURT: All right.

8 MR. MORRISON: Okay. And that's actually
9 all I have, your Honor.

10 THE COURT: All right. So just to make
11 one clarification, Ms. Igo.

12 Your changes were only to the texts in the
13 docket, not any of the documents that were filed or
14 any of the timing of the documents being --

15 THE WITNESS: Correct.

16 THE COURT: Okay. All right. Any further
17 questions?

18 MR. CALL: When you say "the texts,"
19 you're saying that she didn't make any changes to the
20 pleading? Is that what you are asking?

21 THE COURT: Right. So all we are talking
22 about is the docket.

23 MR. CALL: The court docket.

24 THE COURT: The court docket and entries
25 in the docket, which are not the pleadings that are

1 filed. Not when the pleadings are filed, it's just
2 more informational.

3 MR. CALL: Right. My understanding is she
4 doesn't have knowledge about that.

5 THE COURT: Right. All right. You may be
6 excused.

7 All right. Let's resume tomorrow, then,
8 at 1:00 p.m.

9 Court is in recess.

10 THE CLERK: All arise.

11 (Court adjourned at 4:44 p.m.)
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1 REPORTER'S CERTIFICATE

2
3 STATE OF UTAH)
4 COUNTY OF SALT LAKE) ss.

5 I, Dawn M. Perry, Certified Shorthand
6 Reporter, do hereby certify:

7 That on May 21st, 2020, I transcribed an
8 electronic recording at the request of Steven W.
Call;

9 That the testimony of all speakers was
10 reported by me in stenotype and thereafter
11 transcribed, and that a full, true, and correct
12 transcription of said testimony is set forth in the
preceding pages, according to my ability to hear and
understand the audio recording provided;

13 I further certify that I am not kin or
14 otherwise associated with any of the parties to said
cause of action, and that I am not interested in the
outcome thereof.

15 WITNESS MY HAND AND OFFICIAL SEAL this
16 26th day of May, 2020.

17
18
19 
20

21 _____
22 Dawn M. Perry, CSR
23
24
25

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